

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CALVIN ROUSE,

Plaintiff,

v.

DOUG WADDINGTON *et al.*,

Defendants.

Case No. C06-5183RJB

ORDER ADOPTING REPORT
AND RECOMMENDATION
AND RE-REFERRING CASE TO
MAGISTRATE JUDGE

This matter comes before the Court on the Report and Recommendation of United States Magistrate Judge J. Kelley Arnold. Dkt. 56. The Court has considered the Report and Recommendation (Dkt. 56), Plaintiff's Objections to the Report and Recommendation (Dkt. 57), and the file herein.

Originally filed in February of 2006, Plaintiff brings this civil rights action pursuant to 42 U.S.C. § 1983. Dkt. 6-3. On July 6, 2006, the complaint in this matter was dismissed without prejudice as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) because Plaintiff sought return of 360 days of his good conduct time. Dkt. 13-1. Plaintiff was granted leave to amend his complaint, but was warned not to raise issues previously dismissed. Dkt. 16. Plaintiff filed an amended complaint. Dkt. 19. Plaintiff attempted to gain leave to amend his complaint on additional occasions, and leave was denied. Dkts. 25, 27, 38, and 41. Due to the fact that the case was filed several months ago, Plaintiff was warned not to attempt to add additional claims or defendants. *Id.* In March of 2007, Defendants filed a Motion for a More Definite Statement. Dkt. 42. The Motion

1 was granted, and Plaintiff filed a Second Amended Complaint. Dkt. 49. Despite being warned not
2 to add claims which have been dismissed or new claims and/or defendants, Plaintiff's proposed
3 Second Amended Complaint contains a claim regarding the loss of his good time credits, and new
4 claims and defendants. Dkt. 49.

5 Defendants moved for involuntary dismissal of the Second Amended Complaint due to
6 Plaintiff's failure to follow the Court's orders. Dkt. 50. Judge Arnold filed a Report and
7 Recommendation on June 19, 2007, recommending that Defendants' motion be granted, in part, and
8 the new claims and defendants be dismissed with prejudice. Dkt. 56. Judge Arnold recommends
9 that the claims relating to the disciplinary hearing and loss of good time be again dismissed without
10 prejudice as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). *Id.* Judge Arnold recommends that
11 the Defendants' motion be denied as to Plaintiff's equal protection claim, and the two Eighth
12 Amendment claims. *Id.*

13 Judge Arnold's Report and Recommendation should be adopted. Pursuant to Fed. R. Civ. P.
14 41(b), Plaintiff's new claims and defendants should be dismissed with prejudice. Plaintiff filed this
15 matter several months ago and continually attempts to add claims and defendants, changing the
16 nature of the complaint. In light of the procedural posture of the case, Plaintiff has been warned
17 against attempting to add new defendants or claims. Dkt. 43. Plaintiff has continued to ignore the
18 Courts' orders and as a sanction for failing to comply with the orders of the Court, the new claims
19 and new defendants in the Second Amended Complaint should be dismissed with prejudice.

20 Plaintiff's claims regarding the disciplinary hearing and loss of good time have been dismissed
21 without prejudice as barred by *Heck* on at least two occasions. Dkt. 16 and 41. Those claims should
22 again be dismissed without prejudice.

23 As stated in the Report and Recommendation, the case should go forward on Plaintiff's equal
24 protection claim and the two Eighth Amendment claims.

25 Therefore, it is **ORDERED** that the Report and Recommendation (Dkt. 56) is **ADOPTED**.
26 This matter is **RE-REFERRED** to the Hon. J. Kelley Arnold to conduct further proceedings
27 consistent with this order and the order of reference.
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1 The Clerk is directed to send copies of this Order to Plaintiff, to all counsel of record, and to
2 the Hon. J. Kelley Arnold.

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4 DATED this 16th day of July, 2007.

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7 Robert J Bryan
8 United States District Judge
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